IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO.2814 OF 1991

1. M/s.Vasanji Khatau & co.,
a firm registered under the provisions of the Indian Provisions of the Indian Partnership Act, 1932, carrying on business at Dena Bank Bldg. No.II, 3rd floor, 17, Horniman Circle, Bombay-400 023.

2. Nimesh Bhimani of Bombay .. Petitioners
Indian Inhabitant, residing at Plot No.443, Ratan Bhuwan, Mohila Ashram Road, Bombay-400 019, being a Sole Proprietor of the 1st petitioner firms.

v/s.

1. Dena Bank,
being a body corporate constituted under the provisions of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, having its registered office at Maker Towers 'E', Cuffe Parade, Bombay 400 005, and having its Main Office at Dena Bank Building No.II, 17, Horniman Circle, Bombay-400 023.

2. Brig.R.D.Paliwal,
The Estate Officer, Dena Bank, appointed under section 3 of the Eviction Act, 1971, having his office at Maker Towers 'E', 9th floor, Cuffe Parade, Colaba, Bombay-400005. .. Respondents

Mr.N.H.Seervai, senior counsel i/by M/s.Kishore Dalal & Co. for the petitioners.

CORAM : R.M. LODHA AND
J.P. DEVADHAR, JJ.

DATED : 4th August, 2005

ORAL JUDGMENT (Per R.M.Lodha, J.)

Heard Mr.N.H.Seervai, the learned senior counsel

for the petitioners. Nobody appears for the respondents despite service.

2. At the outset, Mr.N.H.Seervai, the learned senior counsel for the petitioners submitted that the petitioners are not desirous of pressing the reliefs pertaining to the challenge to the constitutional validity of the provisions of the Public Premises (Eviction of unauthorised Occupants) Act, 1971.

3. In so far as the challenge to the notice dated 26th July, 1991 issued under sub-section (1) and clause (b)(ii) of sub-section (2) of section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 is concerned, we are of the view that the petitioners must respond to the said notice by filing suitable reply before the Estate Officer. The Estate Officer must then decide the matter in accordance with law after hearing the parties.

4. As regards the challenge to the notice under sub-section (3) of section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971, we are of the view that the said notice must be proceeded with by the Estate Officer after the disposal of the proceedings pursuant to the notice issued to the petitioners under sub-section (1) and clause (b)(ii) of sub-section (2) of section 4 of

the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

5. We, accordingly, dispose of the writ petition by the following order:-

(i) The petitioners shall respond to the notice under sub-section (1) and clause (b)(ii) of sub-section (2) of section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and file suitable reply thereto before the Estate Officer within eight weeks from today.

(ii) The Estate Officer shall then decide the matter in respect of the notice under sub-section (1) and clause (b)(ii) of sub-section (2) of section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 in accordance with law after hearing the parties.

(iii) The proceedings pursuant to the notice issued to the petitioners under sub-section (3) of section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 shall be taken up after four weeks of

the decision on the notice under sub-section (1) and clause (b)(ii) of sub-section (2) of section 4 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

No costs.

(R.M.LODHA, J.)

(J.P. DEVADHAR, J.)